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From:

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To:

Cc:

Subject: FW: 6707A penalty calculation question

We are generally viewing the decrease in tax as being determined on a year-by-year basis. So, although there is one disclosure, we believe the calculation (with its minimum and maximum) should be made separately for each year the disclosure covers and then the amounts for each year added together to determine the penalty for the return with lacking or insufficient disclosure.

In your hypothetical example, a transaction became a reportable transaction in February 2008 (Distressed Asset Transaction) but the taxpayer participated in the transactions since 2005. The disclosure was due with the 2007 return, but the disclosure would relate to all open years i.e., 2005, 2006, 2007. The penalty would be calculated by determining 75% of the decrease in tax for 2005 relating to the reportable transaction and applying the minimum and maximum limits as appropriate. The same calculation would be done for 2006 and 2007. Then, those three amounts would be added together to get the total penalty for failing to disclose with the 2007 return.

[REDACTED]